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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

IGNACIO PEREZ, on Behalf of Himself
and all Others Similarly Situated,

Plaintiff,

v.

RASH CURTIS & ASSOCIATES,

Defendant.

Case No. 4:16-cv-03396-YGR

**THE PARTIES' PROPOSALS
REGARDING JURY INSTRUCTION NO.
32**

Judge: Hon. Yvonne Gonzalez Rogers

At the pre-trial conference on April 29, 2019, the parties discussed Joint Proposed Jury Instruction No. 32 – Introduction to a Class Action. The Court ordered the parties to meet and confer regarding the proposed instruction and to either submit an agreed instruction or their competing proposals by Wednesday, May 1, 2019 at 5:00 p.m. The parties met and conferred and were unable to reach agreement. A copy of the email exchange memorializing the parties’ efforts to meet and confer is attached hereto as Exhibit 1. The parties’ proposed instructions are set forth below.

I. PLAINTIFF’S PROPOSED JURY INSTRUCTION NO. 32 – INTRODUCTION TO A CLASS ACTION

A class action is a lawsuit that has been brought by one or more plaintiffs on behalf of a larger group of people who have similar legal claims. All of these people together are called a “class.” The Court has appointed Plaintiff Ignacio Perez as the class representative and Bursor & Fisher, P.A. as Class Counsel to represent the class.

In a class action, the claims of many individuals can be resolved at the same time instead of requiring each member to sue separately. Because of the large number of claims that are at issue in this case, not everyone in the class will testify. You may assume that the evidence at this trial applies to all class members, except as I specifically tell you otherwise. All members of the class will be bound by the result of this trial.

In this case, there are four classes that have been approved or “certified” by the Court.¹ The Classes are defined to include people whose telephone numbers were obtained by Rash Curtis through skip tracing, and who Rash Curtis called using one or more autodialers or who Rash Curtis called using a prerecorded message.² They will be referred to collectively as “The Class” or as

¹ Defendant now disputes this sentence and the two preceding paragraphs even though they were agreed to by the parties and submitted as Joint Proposed Jury Instruction No. 32. In addition, this portion of the proposed instruction was based on CACI No. 115 (“Class Action” Defined). The jury should be instructed about what a class action is.

² Defendant has agreed to this sentence.

1 “Class Members.”³ The Class Members do not include any people for whom Rash Curtis has had a
2 debt-collection account in their name.⁴

3 This case concerns calls made by Rash Curtis from June 17, 2012 through April 2,
4 2019. This is referred to as the “Class Period.”⁵

5 **II. DEFENDANT’S PROPOSED JURY INSTRUCTION NO. 32 – INTRODUCTION TO A** 6 **CLASS ACTION**

7
8 Defendant Rash Curtis submits its proposal for Instruction No. 32 as follows:

9 “A class action is a lawsuit that has been brought by one or more plaintiffs on behalf of a
10 larger group of people who have similar legal claims. All of these people together are called a
11 “Class.” The people that make up the Class will be referred to as “Class Members.” This case
12 involves four classes who are represented by Ignacio Perez. Mr. Perez will be referred to as the
13 “Class Representative.” Bursor & Fisher, P.A. is “Class Counsel,” and it represents Mr. Perez and
14 the Class.

15 In a class action, the claims of many individuals are resolved at the same time, instead of
16 requiring each member to sue separately. Because of the large number of claims that are at issue in
17 this case, not everyone in the class will testify. All members of the class will be bound by the
18 result of this trial.

19
20
21 ³ Defendant has agreed to this sentence.

22 ⁴ Defendant disputes this sentence and claims that it is inaccurate. This language was derived from
23 the last paragraph of the proposed instruction the Court sent to the parties on April 26, 2019, which
24 stated: “Class members do not include any persons who provided their cellular telephone in an
25 application for credit to a creditor that has opened an account with Rash Curtis in such person's
26 name prior to Rash Curtis first placing a call using an automatic dialing system and/or prerecorded
27 voice.” It is also similar to the language used by the Court in the Class Certification Order (Doc.
28 81, at 2:11-15): “Excluded from the classes are persons who provided their cellular telephone in an
application for credit to a creditor that has opened an account with [d]efendant in such debtor’s
name prior to [d]efendant first placing a call using an automatic telephone dialing system and/or
prerecorded voice.” There is no dispute whether the classes exclude debtors. This information
should be provided to the jury. Defendant’s proposed instruction is inaccurate because it omits the
exclusion of debtors from the class definition. *Id.*

⁵ Defendant has agreed to this sentence.

1 The classes are defined as people whose telephone numbers were obtained by Rash Curtis
2 through skip tracing, and who Rash Curtis called using one or more auto dialers, or who it called
3 using a prerecorded message.

4 This case concerns calls made by Rash Curtis from June 17, 2012 through April 2, 2019.
5 This is referred to as the "Class Period.""

6
7 This proposal incorporates the gist and substance of the original instruction, but it is more
8 neutral and less argumentative. It also avoids the suggestion of the Court favoring the Plaintiff's
9 case by reference to the Court and suggesting its imprimatur.

10
11 Dated: May 1, 2019

BURSOR & FISHER, P.A.

12 By: /s/ Yeremey Krivoshey
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1 Dated: May 1, 2019

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